

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PROCAPUI-PRODUTORES de CAMAROES de
ICAPUI LTDA.

Plaintiff,

07 Civil Action
File No. 6627-BSJ

v.

MARCIAL GERALD LAYANI, G. F. HIGGINS,
INC., THERESA HIGGINS, as Executrix of
THE ESTATE OF GERALD FRANCIS HIGGINS,
THOMAS HIGGINS, ROBERT HIGGINS,
RICHARD RUBIN and NOEL BLACKMAN,

NOTICE OF MOTION
TO DISMISS
COMPLAINT AND
FOR OTHER
RELIEF

Defendants.
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S I R S:

PLEASE TAKE NOTICE that, upon the Summons and Complaint herein,
filed July 24, 2007, upon the declaration of Marcial Gerald Layani dated August
13, 2007 and upon the accompanying Memorandum of Law, Defendants G. F.
HIGGINS, INC., THERESA HIGGINS as Executrix of the Estate of GERALD
FRANCIS HIGGINS, THOMAS HIGGINS and ROBERT HIGGINS will move
this Court before Hon. Barbara S. Jones, in Room 18B, United States Courthouse,
500 Pearl Street, New York, NY 10007, on the 11th day of September, 2007 at
9:30 in the forenoon of that day or as soon thereafter as counsel may be heard, for

Orders and a Judgment seeking the following relief upon the grounds and statutes set forth:

1. An Order and Judgment pursuant to Rules 12(b)(6) and 9(b) F.R.Civ.P. dismissing the First, Second, Third and Fourth Claims for Relief (“RICO Claims”) for failure to state a Claim for Relief and for failure to allege the purported Claims with the required particularity and on the ground that the Plaintiff lacks standing to bring a RICO action and on the further ground that Plaintiff has waived or condoned any action of the Higgins Defendants;

2. In the event the Motion in ¶ 1 above is granted, an Order and Judgment dismissing the Fifth Claim for Relief and the entire action, as to all claims and as to all Defendants, pursuant to Rules 12(b)(1) and 12(h)(3) F.R.Civ.P. and 28 U.S.C. § 1332, on the ground that the Court lacks subject matter jurisdiction over this action since there is no diversity of citizenship or alienage jurisdiction between the Plaintiff and the Defendant MARCIAL GERALD LAYANI since Plaintiff is a foreign corporation and Defendant LAYANI is a U.S. citizen domiciled outside of the United States;

3. In the event the Court denies the Motions in ¶¶ 1 and 2 above, an Order pursuant to Rule 12(e) F.R.Civ.P. ordering Plaintiff to provide a more definite statement as to the allegations of the Complaint;

4. In the event the Court denies the Motions in ¶¶ 1 and 2 above, an Order

dismissing all claims in the First, Second, Third or Fourth Claims for Relief which seek damages for any claimed injury to Plaintiff allegedly resulting from the conduct alleged which was discovered or could, through the exercise of reasonable diligence, have been discovered prior to July 24, 2003 on the ground that such claims are barred by the Statute of Limitations. (*See, Rotella v. Wood*, 528 U.S. 549, 120 S. Ct. 1075, 145 L.Ed. 2d 1047 (2000) and *Agency Holding Corporation v. Malley-Duff & Associates, Inc.*, 483 U.S. 143, 107 S. Ct. 2759, 97 L. Ed. 2d 121 (1987));

5. In the event the Court denies the Motions in ¶¶ 1 and 2 above, an Order granting a stay of further proceedings in this action or an abstention from proceeding, pursuant to the inherent authority of the Court to control its calendar, on the ground that there is already pending in the Supreme Court, New York County an action which has been pending since September, 2005 in which the same transactions are at issue and in which the Plaintiff in this action has failed to assert as defenses the matters asserted as claims in this action and has, accordingly, waived them;

TOGETHER WITH such other and further relief as to the Court may seem just and proper and the costs of these Motions.

Dated: New York, NY
August 16, 2007

Yours, etc.

John J. Phelan, III, P.C.

By/S/ _____
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